

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-1128

United States of America,

Appellee,

v.

Wesley Norvette Hawkins,

Appellant.

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Appeal from the United States
District Court for the
District of Minnesota.

[UNPUBLISHED]

Submitted: August 22, 1997

Filed: September 2, 1997

Before WOLLMAN, LOKEN, and HANSEN, Circuit Judges.

PER CURIAM.

In this appeal following remand, Wesley Norvette Hawkins challenges the new sentence imposed on him by the district court.¹ We affirm.

¹The Honorable James M. Rosenbaum, United States District Judge for the District of Minnesota.

The district court previously sentenced Hawkins to 262 months imprisonment for possessing cocaine and crack cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1); a concurrent 120-month prison term for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1); a consecutive 60-month prison term for using a firearm in relation to the charged drug trafficking, in violation of 18 U.S.C. § 924(c)(1); and 5 years supervised release. In doing so, the district court denied Hawkins's motion under U.S. Sentencing Guidelines Manual § 4A1.3, p.s. (1995) for a downward departure. We initially affirmed Hawkins's convictions and sentences, and also concluded that the denial of his section 4A1.3 motion was unreviewable given the district court's awareness of its authority to depart, see United States v. Hawkins, 59 F.3d 723, 726, 731-32 (8th Cir. 1995), but the Supreme Court later vacated our judgment and remanded the case to us for further consideration in light of Bailey v. United States, 116 S. Ct. 501 (1995), see Hawkins v. United States, 116 S. Ct. 1257 (1996). We thus remanded the case to the district court for further consideration of the gun count, and affirmed the convictions and sentences on the remaining counts. See United States v. Hawkins, No. 94-3436 (8th Cir. July 29, 1996) (order).

On remand to the district court, Hawkins again moved for a downward departure under section 4A1.3. The district court vacated the gun conviction and 60-month sentence, but denied Hawkins's section 4A1.3 motion, declining to reconsider its prior ruling. On appeal, Hawkins argues the district court erroneously believed that our prior decision in his direct criminal appeal limited the district court's discretion to reconsider the issue of a downward departure. Upon careful review of the record, however, we conclude that the court's refusal to reconsider amounted to another discretionary decision not to depart. Therefore, we conclude once again that the court's decision on that point is unreviewable. See United States v. Hall, 7 F.3d 1394, 1396 (8th Cir. 1993).

Accordingly, we affirm the judgment of the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.